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REMARKS

Claims 2 and 8-12 are pending in the present application.

In the office action mailed April 7, 2006 (the "Office Action"), the Examiner objected to reference to Guy Druce, *Level-1 Algorithm, V1.6* (December 4, 2000) at page 4 of the present application. The Examiner also rejected claims 2 and 8 under 35 U.S.C. 102(b) based upon a public use or sale of the invention, and requested additional information regarding the issue. The Examiner further rejected claim 2 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication no. 2001/0049619 to Powell *et al.* (the "Powell reference") and rejected claims 8-10 under 35 U.S.C. 102(e) as being anticipated by International Publication No. WO 00/68856 to Webvan Group, Inc. (the "Webvan reference"). Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Webvan reference in view of Nanry, Solving the Pickup and Delivery Problem with Time Windows Using Reactive Tabu Search Transportation Research, Part B, Vol. 34, 2000 (the "Nanry reference").

An information disclosure statement was submitted on September 19, 2005 (the "IDS"). Applicants request the Examiner consider the references cited in the Form PTO-1449 of the IDS and provide the attorney of record with a signed and initialed copy of the Form PTO-1449.

In the Examiner's Response to Arguments in the Office Action, the Examiner suggests that the arguments presented in the previous response are based on features that are not recited in the rejected claims. *See* the Office action at pages 2-3. The Examiner particularly references "scheduling a particular worked [sic] with a set of desired skills, generating a list of schedulable time blocks for a worker matching customer criteria." *See id.* The discussion of particular workers and customer criteria was provided by way of example to provide context for the limitation of generating of a list of schedulable time blocks. The particular example was not intended to be the basis of arguing patentability over the Babayev patent. As discussed in the previous response as one of the deficiencies of the references cited by the Examiner, "the Babayev patent fails to disclose generating a list of schedulable time blocks for a shift identified in the opening." *See* page 6 of the previous response. The argument for patentability did not rely on scheduling a particular worker with a set of desired skills or generating schedulable time blocks for a worker matching customer criteria, but on generating a list of schedulable time

blocks as recited in claims 2 and 8. To further clarify the limitation of generating a list of schedulable time blocks, claims 2 and 8 have been amended to include that schedulable time blocks have at least one of a free time block and a virtual free time block and define a range of time having openings to which the order can be assigned.

With respect to the Examiner's objection to inappropriately incorporating the subject matter of Guy Druce, *Level-1 Algorithm, V1.6* (December 4, 2000) into the application by reference, the reference at page 4 has been removed from the present application. The Examiner's objection should now be withdrawn.

With respect to the issue of public use or on sale activity, the Examiner requested the following information to be provided: the names of any products or service that have incorporated the claimed subject matter, as well as information regarding their public use and/or sale (e.g., product road maps, sales presentations, investor disclosures, case studied, product manuals, product brochures, etc.), and a citation and a copy of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter and/or products or services. *See* the Office Action at page 6.

As verified by Mr. Simon Jacobs, the claimed subject matter of the present application was not included in any of MDSI's products or services that were available prior to March 31, 1999, that is, more than one-year before the earliest priority date for the claimed subject matter. As illustrated by the press release of October 26, 1998 touting joint development between Vantive and MDSI as well as the materials available on MDSI's Website describing features of the Advantex-Field Service available at that time, the Examiner is aware that MDSI has marketed its Advantex-Field Service solutions as early as 1998. The version of the Advantex-Field Service described at that time, however, did not include the claimed subject matter of the present invention. The subject matter of the present application represents development of an appointment scheduling application intended to succeed the appointment scheduling feature that was available at that time.

It appears that the issues of public use or on sale activity are raised by the Examiner based on the fact that MDSI has marketed a product that included an appointment scheduling feature more than one-year prior to the priority date of the present application. For example, with reference to the material available from MDSI's Website, the appointment

scheduling feature is described as “meet[ing] industry needs for sophisticated appointment scheduling.” The rest of the material generally describes operation and functionality of the appointment scheduling, but does not provide detail as to the scheduling process. Similarly, the press-release generally describes scheduling capabilities of the MDSI’s Advantex-Field Service solution. Again, however, the press-release does not describe the particular process used for appointment scheduling. Thus, it is true that MDSI’s Advantex-Field Service solution included appointment scheduling functionality, however, the appointment scheduling feature available at that time is not the same as the claimed subject matter of the present application.

Although the claimed subject matter was not incorporated in any products or services available prior to March 31, 1999, a presentation describing the subject matter of the present application was given by the inventors on April 3, 2000 at a conference of MDSI’s user group, Mindshare, in anticipation of releasing a new version of the Advantex-Field Service that included the claimed subject matter. The presentation was given during the segment entitled, “Scheduling: Optimizing the Productive Time of Mobile Resources.” *See* copy of Schedule for Mindshare Conference. Copies of the presentations by the inventors have been provided for review by the Examiner.

The Examiner further requests citations and copies of publications by any of the applicants which describe the subject matter of the present application. Neither inventor authored any such publications.

Based on the foregoing discussion, the Examiner’s rejection of claims 2 and 8 under 35 U.S.C. 102(b) based upon a public use or sale of the invention should be withdrawn.

As previously mentioned, claim 2 has been rejected under 35 U.S.C. 102(b) as being anticipated by the Powell reference, and claims 8-10 have been rejected under 35 U.S.C. 102(e) as being anticipated by the Webvan reference.

The Powell reference is directed to a scheduling system for allocating appointment time windows. The Webvan reference is directed to a grocery delivery system for an on-line grocer. As part of the Webvan system, there is a delivery scheduling feature allowing customers to select delivery times. Neither the Powell nor Webvan references disclose the combination of limitations as recited in amended claims 2 and 8. For example, the Powell reference does not disclose a method for assigning an order to an opening in a schedule that

includes generating a list of schedulable time blocks for a shift identified in the opening, the schedulable time blocks having at least one of a free time block and a virtual free time block and defining a range of time having openings to which the order can be assigned. The Webvan reference is similarly deficient.

For the foregoing reasons, claims 2 and 8 are patentably distinct from both the Powell reference and the Webvan reference. Claims 9-10, which depend from claim 8, are patentably distinct based on their dependency from a respective allowable base claim. Therefore, the rejection of claims 2 and 8-10 under 35 U.S.C. 102(e) should be withdrawn.

Claims 11 and 12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Webvan reference in view of the Nanry reference.

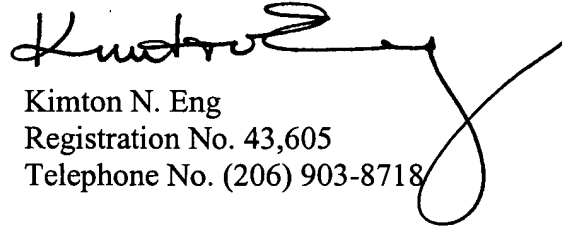
The Examiner has cited the Nanry reference as teaching well known techniques of defragmenting a set of time blocks. *See* the Office Action at page 12. Even if it is assumed for the sake of argument that the Examiner's characterization of the Nanry reference is accurate, and that one ordinarily skilled in the art would be motivated to modify the teachings of the Webvan reference as described by the Examiner, the Nanry reference fails to make up for the deficiencies of the Webvan reference as previously discussed.

For the foregoing reasons, claims 11 and 12 are patentable over the Webvan reference in view of the Nanry reference, and therefore, the rejection of claims 11 and 12 under 35 U.S.C. 103(a) should be withdrawn.

All of the claims pending in the present application are in condition for allowance.  
Favorable consideration and a timely Notice of Allowance are earnestly solicited.

Respectfully submitted,

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